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Exxon Mobil Corporation

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 EXXON MOBIL CORPORATION,
15
16 Petitioner and
Plaintiff,

17 v.

18 SANTA BARBARA COUNTY
BOARD OF SUPERVISORS,

19 Respondent and
20 Defendant.
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Case No. 2:22-cv-03225-DMG-MRW

**JOINT REPORT OF PARTIES
PURSUANT TO FRCP 26(F) AND
L.R. 26-1**

Scheduling Conference: August 12, 2022
Time: 9:30 A.M.
Judge: Hon. Dolly M. Gee
Courtroom: 8C
Complaint Filed: May 11, 2022
Trial Date: Not Set

1 Pursuant to Federal Rule of Civil Procedure 26(f) and Rule 26-1 of the Local
2 Rules of the Central District of California, and the Court’s Scheduling Conference
3 order, filed June 27, 2022 (Dkt. No. 13), Petitioner and Plaintiff Exxon Mobil
4 Corporation (“ExxonMobil”) and Respondent and Defendant Santa Barbara County
5 Board of Supervisors (the “Board”) submit the following joint report.

6 **I. SYNOPSIS OF PRINCIPAL ISSUES**

7 ExxonMobil is the owner and operator of the Santa Ynez Unit (“SYU”)
8 which consists of three offshore platforms—Hondo, Heritage, and Harmony (the
9 “Platforms”) located on submerged lands leased from the United States in federal
10 waters off the coast of the County of Santa Barbara (the “County”)—and an
11 onshore processing center (“LFC”) located in Las Flores Canyon, near Goleta. In
12 May 2015, one of two pipelines used to transport crude oil processed at SYU
13 ruptured. The third-party owner and operator of the pipelines subsequently shut
14 down both pipelines. In September 2017, ExxonMobil filed a permit application
15 with the County seeking authorization to temporarily truck SYU’s crude oil from
16 LFC through the County for up to seven years, or until a pipeline became available,
17 whichever was shorter (the “Project”). In March 2022, the Board denied the permit
18 for the Project, leaving ExxonMobil without any alternative for transporting oil
19 collected from SYU until an approved pipeline becomes available.

20 *1. ExxonMobil’s Position*

21 This is an action for a writ of administrative mandate, seeking to vacate and
22 set aside the denial of the Project pursuant to California Code of Civil Procedure
23 section 1094.5. ExxonMobil has a vested right to restart and operate SYU and
24 contends that (1) all conditions necessary for the Board to approve the Project have
25 been met; and (2) the Board’s denial of the Project was not supported by substantial
26 evidence.

27 Following the resolution of the writ of administrative mandate, ExxonMobil,
28 if necessary, will seek declaratory relief and damages arising from the denial of the

1 Project. ExxonMobil contends that the denial (1) violates the Commerce Clause of
 2 the United States Constitution and the California Constitution by unjustifiably
 3 regulating, discriminating against, or burdening commerce beyond the County's
 4 borders; (2) constitutes an illegal exercise of police power; and (3) constitutes a
 5 taking in violation of the Fifth Amendment to the United States Constitution and
 6 Article I, section 19 of the California Constitution for which ExxonMobil is entitled
 7 to just compensation.

8 *2. The Board's Position*

9 The Board denies all of ExxonMobil's claims.

10 ***

11 The following are brief, summary statements of the parties' main claims and
 12 defenses. Each statement was drafted by the party making the claims or defenses
 13 and does not represent an agreement by the other party as to its accuracy or the
 14 issues raised therein.

15 **A. Statement of the Case**

16 *1. ExxonMobil's Position*

17 The Board unlawfully denied ExxonMobil's application for the Project. The
 18 Board denied the Project based on, among other things, the California
 19 Environmental Quality Act ("CEQA"). CEQA section 15093(a) "requires the
 20 decision-making agency to balance, as applicable, the economic, legal, social,
 21 technological, or other benefits, including region-wide or statewide environmental
 22 benefits, of a proposed project against its unavoidable environmental risks when
 23 determining whether to approve the project." The Board did not respect this
 24 statutory limit. Instead, it concluded that the Project would be "detrimental to the
 25 environment generally"—a conclusion that was not supported by substantial
 26 evidence. The Board abused its discretion and acted in an arbitrary, capricious, and
 27 unlawful manner by disregarding the limits on review imposed by CEQA.

28 The County's Coastal Land Use Plan, Coastal Land Use Plan Policy 6-8(d),

1 Coastal Zoning Ordinance (“CZO”) section 35-154.5(i), and Land Use and
 2 Development Code (“LUDC”) section 35.52.060.B.10.b allow non-pipeline oil
 3 transportation if a pipeline is unavailable and the environmental impacts of the
 4 alternative transportation mode are mitigated to the maximum extent feasible.
 5 SYU’s Development Plan expressly incorporates and authorizes ExxonMobil to
 6 transport oil by means other than a pipeline subject to these regulations. The
 7 Project meets these criteria. In denying the Project, the Board declared that
 8 transportation of oil by truck is not appropriate. This conclusion was not consistent
 9 with local ordinances and codes regulating the oil and gas industry, nor was it
 10 supported by substantial evidence. Thus, the denial of the Project constitutes a
 11 prejudicial abuse of discretion.

12 By this action, ExxonMobil seeks a writ of administrative mandate pursuant
 13 to California Code of Civil Procedure section 1094.5. ExxonMobil also seeks
 14 declaratory relief and damages arising from the Project denial.

15 *2. The Board’s Position*

16 The Board’s decision denying ExxonMobil’s application to modify its
 17 development permit to allow the transport of crude oil by truck through Santa
 18 Barbara County rather than by pipeline, as permitted by the existing development
 19 permit, was not a prejudicial abuse of the Board’s discretion and did not violate the
 20 Fifth Amendment of the U.S. Constitution, the California Constitution, the
 21 Commerce Clause, or any other federal or state law.

22 **B. Legal Issues**

23 Key legal issues for the writ of administrative mandate include:

- 24 1. Whether the Board’s denial of the Project was supported by substantial
 25 evidence, Cal. Code of Civ. Proc. § 1094.5(c);
- 26 2. Whether the Board prejudicially abused its discretion and acted in an
 27 arbitrary, capricious, and unlawful manner in excess of its jurisdiction
 28 by denying the Project; and

- 1 3. Whether the Board's denial of the Project violates the County's
 2 Coastal Land Use Plan and Coastal Land Use Plan Policy 6-8(d), as
 3 well as CZO section 35-154.5(i) and LUDC section 35.52.060.B.10.b.
 4 Additional issues, to be resolved after the writ of administrative mandate,
 5 include:
- 6 4. Whether the Board's denial of the Project constitutes extraterritorial
 7 regulation of, discrimination against, or an undue burden on interstate
 8 commerce;
- 9 5. Whether the Board's denial of the Project constitutes an invalid
 10 exercise of police power; and
- 11 6. Whether ExxonMobil is entitled to just compensation pursuant to the
 12 Fifth Amendment to the United States Constitution and Article I,
 13 section 19 of the California Constitution for the denial of the Project
 14 and the amount of said compensation.

15 **C. Relief**

16 *1. ExxonMobil's Position*

17 ExxonMobil seeks a writ of administrative mandate pursuant to California
 18 Code of Civil Procedure section 1094.5 compelling the Board to vacate and set
 19 aside the denial of the Project and directing the Board to reconsider the Project in
 20 light of the requirements of CEQA and all other applicable state and local policies,
 21 laws, ordinances, and regulations. ExxonMobil also seeks declaratory relief, just
 22 compensation, damages, and its attorneys' fees and costs.

23 *2. The Board's Position*

24 The Board denies all of ExxonMobil's claims for relief.

25 **II. PROPOSED SCHEDULE**

26 **A. Bifurcation**

27 The parties propose that the case be litigated in two phases and that all
 28 disclosures and discovery related to the second phase be stayed pending resolution

of the first.

Phase I would deal with ExxonMobil's first cause of action: petition for writ of administrative mandate. The parties anticipate that the administrative record will be the primary evidence for Phase I and that no additional discovery will be required. The parties agree that Phase I should be resolved by cross motions for summary judgment and that a trial will likely not be necessary. No additional motion practice is anticipated. Because the outcome of Phase I may resolve the case, this report does not include a Schedule of Pretrial & Trial Dates Worksheet. All dates applicable to Phase I are stated Section II. B, below.

Phase II would include all the remaining causes of action. The parties agree to meet and confer regarding Phase II and will submit a supplemental Joint Report, including a Schedule of Pretrial & Trial Dates Worksheet, if necessary after the resolution of Phase I.

B. Phase I Timeline

The parties agree to the following schedule for Phase I:

Matter	Joint Requested Date
Administrative Record to be Filed	December 13, 2022
Any Motion to Supplement or Complete the Administrative Record	January 13, 2022*
Board Motion for Summary Judgment	February 13, 2023
ExxonMobil Cross-Motion for Summary Judgment and Opposition to Board Motion for Summary Judgment	March 30, 2023
Board Reply on Motion for Summary Judgment and Opposition to ExxonMobil Cross-Motion for Summary Judgment	May 1, 2023
ExxonMobil Reply on Cross-Motion for Summary Judgment	May 31, 2023
Settlement Conference Completion Date	[TBD]

*In the event that any motion to supplement or complete the administrative record

1 is timely filed, the remaining dates will be stayed and extended by 30 days
 2 following resolution of such motion.

3 The parties agree that either party, individually or collectively, may seek
 4 leave of the Court to change the foregoing dates for good cause.

5 **III. DISCOVERY FOR PHASE I**

6 **A. Status of Discovery**

7 On June 6, 2022, ExxonMobil served the Board with a letter requesting that
 8 it prepare and certify the administrative record for the Project permit application
 9 proceedings. Pursuant to California Code of Civil Procedure section 1094.6(c) and
 10 the above proposed schedule, the administrative record should be compiled and
 11 certified by the Board by no later than December 13, 2022.

12 **B. Proposed Discovery Plan**

13 *1. Discovery Timing and Deadlines*

14 At this time, outside of the preparation and certification of the administrative
 15 record, the parties do not anticipate that additional discovery will be necessary for
 16 Phase I. If possible, the Board will share a draft of the administrative record with
 17 ExxonMobil before lodging it with the Court, to minimize any need for motions
 18 regarding the administrative record. ExxonMobil reserves its right to seek
 19 supplementation of the record, if necessary, after reviewing the Board's
 20 administrative record and a meet and confer by counsel.¹

21 *2. Initial Disclosures*

22 The parties agree to defer or potentially forgo initial disclosures related to
 23 Phase I pending preparation and review of the administrative record.

24
 25 ¹ California Code of Civil Procedure section 1094.5, governing administrative writ
 26 petition proceedings, dictates that the court can consider extra-record evidence only
 27 if: (a) in the exercise of reasonable diligence the parties could not have produced
 28 the evidence during the underlying proceedings; or (b) the evidence was improperly
 excluded during the administrative proceedings. Cal. Code of Civ. Proc. §
 1094.5(e).

1 3. *Preservation of Discoverable Information*

2 The parties agree to meet and confer to negotiate a protocol for the
3 production of any Electronically Stored Information (“ESI”), to the extent the need
4 for ESI arises.

5 **IV. MOTION PRACTICE FOR PHASE I**

6 **A. Motions**

7 1. *Non-Dispositive Motions*

8 At this time, the parties do not anticipate filing any non-dispositive motions
9 for Phase I.

10 2. *Dispositive Motions*

11 The parties anticipate that Phase I of this matter will be resolved by cross-
12 motions for summary judgment based on a certified administrative record for the
13 Project.

14 **B. Proposed Schedule of Law and Motion Matters**

15 1. *Non-Dispositive Motion Filing Deadline*

16 At this time, the parties do not anticipate filing any non-dispositive motions
17 for Phase I.

18 2. *Dispositive Motion Filing Deadline*

19 The preparation and certification of the administrative record in this matter
20 should be completed by no later than December 13, 2022. The parties propose the
21 deadlines stated in Section II.B, above, which may be stayed and extended by 30
22 days following resolution of any motion to supplement the record, if necessary.
23 The parties respectively reserve their rights to seek amendment to those proposed
24 dates for good cause.

25 **V. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION**

26 The parties have not engaged in settlement discussions following the Board’s
27 decision denying the Project. The parties agree that ADR scheduling should be
28 addressed after the resolution of Phase I. Among the Suggested ADR Procedures

under Local Rule 16-15.4, the parties agree to explore private mediation at that time.

VI. TRIAL FOR PHASE I

The parties anticipate that trial for Phase I is unlikely because the writ of administrative mandate should be resolved by motions for summary judgment. In the event the Phase I issues are not resolved on summary judgment, pursuant to California Code of Civil Procedure section 1094.5(a), the Court will decide ExxonMobil's mandamus claim without a jury.

VII. OTHER ITEMS

A. Pleading Amendments

The parties do not anticipate amending their pleadings.

B. Additional Parties

The parties do not anticipate adding other parties to this action.

C. Counsel

Lead counsel for ExxonMobil in this matter is Dawn Sestito. Additional counsel may include Justine M. Daniels, James Auslander, and Jacob P. Duginski.

Lead counsel for the Board in this matter is Mary Pat Barry.

D. Other Issues Affecting Status or Management of Case

1. ExxonMobil's Position

ExxonMobil has requested that the Board prepare the administrative record from the hearing denying its permit application. The Board has 190 days from the date of that request, June 6, 2022, to provide that record. Cal. Code of Civ. Proc. § 1094.6(c). Until ExxonMobil is in receipt of that record, it will not be in a position to prepare any anticipated motions.

2. The Board's Position

At this early stage, the Board is not aware of any other issues that would affect the status or management of the case.

CERTIFICATE OF SERVICE

On July 28, 2022, I caused a true and correct copy of the foregoing Joint Report to be served on all counsel of record by filing the document with this Court's electronic filing system. I hereby certify that I have served all counsel of record electronically.

/s/ Justine Daniels

Attorney of Record for Petitioner and
Plaintiff Exxon Mobil Corporation